



Share the Water

A Coalition for Federal Water Reform

1736 Franklin Street, Suite 400
Oakland, California 94612
Phone (510) 452-9261 • Fax (510) 452-9266

THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT'S DEDICATED ENVIRONMENTAL WATER AND THE BAY-DELTA ACCORD

In October of 1992, President Bush signed the Central Valley Project Improvement Act. Among other measures, the CVPIA's Section 3406(b)(2) requires the Central Valley Project (CVP) to dedicate 800,000* acre feet of water annually to the doubling of anadromous fish in the Central Valley. This water was also available to help implement post-1992 requirements of the Endangered Species Act and the Clean Water Act.

On December 15, 1994, representatives of the state and federal governments and agricultural, urban and environmental organizations signed the landmark Bay-Delta Accord. This agreement included new Clean Water Act and ESA standards to protect the Bay-Delta estuary from the impacts of water diversion.

The agreement, which will expire on December 15 of this year, calls for the federal share of the added water required to meet these new standards to be "credited toward the CVP obligation under Section 3406(b)(2) of the CVPIA to provide 800,000 acre feet of project yield for specified purposes" (page 6). These standards will require different amounts of the 3406(b)(2) dedicated water in different water year types. In wet years, little CVP water will be required to meet the new standards. In dry years, these standards may require most of this dedicated water.

In years where these standards do not require the full 800,000 acre feet, the remainder of this dedicated water is available to meet the upstream and in-Delta fish "doubling" requirements of the CVPIA. Obviously, the CVPIA's fish "doubling" requirement is more ambitious, and requires more extensive actions, than the baseline regulatory requirements of the Clean Water Act and the Endangered Species Act. The Department of Interior's June 24 draft policy documents clearly reflect these facts.

In the spring of 1996, following unsuccessful legal and legislative attacks on Section 3406(b)(2), members of the agricultural community began to claim that the Accord eliminated any CVPIA dedicated water in Section 3406(b)(2) beyond the requirements of the Accord. They have claimed that implementation of Interior's June proposal would represent "another hit" on federal contractors.

* This dedicated water can be reduced to 600,000 acre feet in a drought year, in proportion to reductions in deliveries to CVP exchange contractors. The CVPIA also authorizes the Secretary to return to other CVP users any dedicated water not needed for fish doubling.

Proponents of this radical new interpretation of the Accord have not offered any legally based analysis in support of their position. In fact, this interpretation is not supported by the CVPIA or the Accord. Specifically:

- Signatories to the Accord have no authority to repeal a requirement of federal law (i.e. Section 3406(b)(2)).
- The Accord states that its success depends on the implementation of "other Federal and State efforts." The CVPIA is the most prominent of these efforts. Full implementation of the CVPIA, specifically the management of the water dedicated to fisheries doubling by Section 3406(b)(2) of the Act, is part of the foundation upon which the Accord was built. Any action which threatens this foundation would inevitably threaten the stability of the Accord itself. CALFED staff has publicly acknowledged this linkage.
- The Accord itself discusses the relationship between new Delta standards and the 800,000. The Accord states that the water needed to meet the federal share of the new standards shall be "credited toward" the CVPIA's 800,000 acre feet. This language clearly indicates that additional dedicated water remains after this crediting. Nowhere does the Accord suggest that its provisions should replace the requirements of section 3406(b)(2), or be construed to represent full implementation of this section of the CVPIA.
- The Accord states that no additional water will be required for the life of the Accord to meet the needs of the federal ESA. Nowhere does it discuss changes to the CVPIA or "no additional water" guarantees regarding section 3406(b)(2).
- Far from representing another "hit" on water users, the CVPIA was passed two years before the Accord. The fact that the implementation of this provision has taken so long is largely due to the legislative, administrative and legal attacks on the CVPIA by agricultural contractors.

The environmental community remains concerned regarding some inadequate provisions of Interior's June draft proposal. These concerns include the lack of adequate measures to protect the declining spring run salmon population and the lack of an "accounting" system for the dedicated water. However, nearly five years after the CVPIA was passed, it is time for the Department of Interior to make a final policy decision regarding Section 3406(b)(2) of the CVPIA and to integrate the adaptive implementation of this, and other, requirements of the CVPIA into the CALFED process.

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